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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,967

09/12/2003

Steve Klotz

15436.252.5.1

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22913

7590

04/15/2008

WORKMAN NYDEGGER  
60 EAST SOUTH TEMPLE  
1000 EAGLE GATE TOWER  
SALT LAKE CITY, UT 84111

EXAMINER

CHEA, PHILIP J

ART UNIT

PAPER NUMBER

2153

MAIL DATE

DELIVERY MODE

04/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/661,967	<b>Applicant(s)</b> KLOTZ ET AL.	
	<b>Examiner</b> PHILIP J. CHEA	<b>Art Unit</b> 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/9/07 2/4/08</u>  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office Action is in response to an Amendment filed February 4, 2008. Claims 1-9 are currently pending. Any rejection not set forth below has been overcome by the current Amendment.

#### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on October 9, 2007 and February 4, 2008 was filed after the mailing date of the Non-Final Rejection on October 3, 2007. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2,4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. (US 5,850,388), herein referred to as Anderson.

As per claim 1, Anderson discloses a method for analyzing a network, as claimed, comprising:

capturing a data trace representative of a network operation (see column 10, lines 50-65, where the a data trace is performed in order to calculate network operation parameters such as, traffic statistics and error statistics);

determining the network topology from the data trace (see column 11, lines 57-67, where the topology is determined by monitoring and recording stations that are in the network);

dividing a sample duration window of the trace into a first predetermined number of intervals (see Fig. 19A, where the trace is divided into 4 second intervals);

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calculating an initial state for each device in the network topology for at least one of the first predetermined number of intervals (see column 13, lines 52-67, *where initial states are calculated (i.e. a "Start" step where frames are sent through the network by devices)* and see column 14, lines 1-4 *for the predetermined sampling period interval of one second*) based upon events that occur outside the sample duration window (see column 28, lines 10-17, *where Protocol Distribution (Cumulative) can be initialized to display intervals based upon events that occur outside the sample duration window and events occur outside the sample duration window because it includes event data collected since the monitoring session began versus a user-defined sampling period*); and

displaying network analysis information based upon the initial states and the network topology to the user (see Figs. 19A-19C, where the analysis information collected from the network trace is displayed for the user).

As per claim 2, Anderson further discloses allowing a user to adjust a sample duration window (see column 13, lines 29-37, where sampling period is considered sampling duration window).

As per claim 4, Anderson further discloses that adjusting the sample duration window comprises adjusting the granularity of a displayed sample analysis (see Fig. 19A and a column 13, lines 32-36, where network granularity from a sample size of 4 seconds can be changed to a finer granularity of a sample size of 1 second).

As per claim 5, Anderson further discloses storing a snapshot of the network analysis information (see Figs. 19A-19C, showing a stored snapshot of the network).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 3,6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US 5,850,388), herein referred to as Anderson and further in view of Garg et al. (US 6,327,677), herein referred to as Garg.

As per claim 3, Anderson does not expressly disclose dividing the sample duration window into a second predetermined number of equal intervals, determining a calculated initial state that immediately precedes a first interval in the sample duration window; calculating a valid starting state for each device on the network for the first interval in the sample duration based upon the determined preceding state; and calculating initial states for each device on the network for each of the second predetermined intervals based upon the valid starting state and the data trace.

However, Anderson discloses dividing a duration of the trace into a first predetermined number of equal intervals (see Fig. 19A, where the trace is divided into 4 second intervals) and that a sample duration window can be adjusted (column 13, lines 32-36). It would have been obvious to one of ordinary skill in the art to adjust a sample duration from 4 seconds as pictured in Fig. 19A, to a more refined sample window of 1 second as disclosed in column 13, lines 32-36 in order to extract more details about the network. Furthermore, Garg discloses dividing the sample duration window into a second predetermined number of equal intervals (see Fig. 4, describing how a sample duration window is divided into a second predetermined number of equals from five minute samples to one hour samples).

Therefore, after adjusting the sample duration window, Garg implies determining a calculated initial state that immediately precedes a first interval in the sample duration window (i.e. determining the starting point of the data trace); calculating a valid starting state for each device on the network for the first interval in the sample duration based upon the determined preceding state (i.e. calculating the starting state of the devices in relation to the new sample duration window); and calculating initial states for each device on the network for each of the second predetermined intervals based upon the valid starting state and the data trace (i.e. calculating initial states for each device on the network in relation to the new sample duration window).

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As per claim 6, Anderson further discloses storing a snapshot of the calculated initial states for each device over the second predetermined intervals (i.e. it's obvious that Figs. 19A-19C would show snapshots for each device based on the new sample duration window).

As per claim 7, Anderson further discloses generating errors and metrics representative of the sample duration window (see column 13, lines 38-50).

As per claim 8, Anderson further discloses allowing a user to select the sample window (see column 13, lines 32-36) and the predetermined number of intervals (see column 5, lines 7-10).

As per claim 9, Anderson further discloses allowing the user to select a plurality of parameters to be displayed in the sample window (see Figs. 19A-19C, showing different parameters displayed such as, Network Utilization, Network Frame Rate, and Frame Size Distribution).

### ***Response to Arguments***

6. Applicant's arguments filed February 4, 2008 have been fully considered but they are not persuasive.

A) Applicant contends that Anderson does not disclose calculating an initial state for each device in the network topology for at least one of the first predetermined number of intervals based upon events that occur outside the sample duration window.

In considering A), the Examiner respectfully disagrees. Anderson shows calculating an initial state for each device in the network topology for at least one of the first predetermined number of intervals (see column 13, lines 52-67, *where initial states are calculated (i.e. a "Start" step where frames are sent through the network by devices)* and see column 14, lines 1-4 *for the predetermined sampling period interval of one second*) based upon events that occur outside the sample duration window (see column 28, lines 10-17, *where Protocol Distribution (Cumulative) can be initialized to display intervals based upon events that occur outside the sample duration window and events occur outside the sample duration window because it includes event data collected since the monitoring session began versus a user-defined sampling period*). That is the sample duration window is considered the Protocol Distribution (Sample) that is calculated per

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sampling period and the Protocol Distribution (Cumulative) includes events that have occurred outside the sampling period (i.e. since the network monitoring session began versus since a user-defined sampling period.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP J. CHEA whose telephone number is (571)272-3951. The examiner can normally be reached on M-F 6:30-4:00 (1st Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenton B. Burgess/  
Supervisory Patent Examiner, Art Unit 2153

Philip J Chea  
Examiner  
Art Unit 2153

PJC 4/2/08